

§ 9701.407

(1) Goals or objectives that set general or specific performance targets at the individual, team, and/or organizational level;

(2) Organizational, occupational, or other work requirements, such as standard operating procedures, operating instructions, administrative manuals, internal rules and directives, and/or other instructions that are generally applicable and available to the employee;

(3) A particular work assignment, including expectations regarding the quality, quantity, accuracy, timeliness, and/or other expected characteristics of the completed assignment;

(4) Competencies an employee is expected to demonstrate on the job, and/or the contributions an employee is expected to make; or

(5) Any other means, as long as it is reasonable to assume that the employee will understand the performance that is expected.

(d) Supervisors must involve employees, insofar as practicable, in the development of their performance expectations. However, final decisions regarding performance expectations are within the sole and exclusive discretion of management.

§ 9701.407 Monitoring performance and providing feedback.

In applying the requirements of the performance management system and its implementing directives and policies, supervisors must—

(a) Monitor the performance of their employees and the organization; and

(b) Provide timely periodic feedback to employees on their actual performance with respect to their performance expectations, including one or more interim performance reviews during each appraisal period.

§ 9701.408 Developing performance and addressing poor performance.

(a) Subject to budgetary and other organizational constraints, a supervisor must—

(1) Provide employees with the proper tools and technology to do the job; and

(2) Develop employees to enhance their ability to perform.

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(b) If during the appraisal period a supervisor determines that an employee's performance is unacceptable, the supervisor must—

(1) Consider the range of options available to address the performance deficiency, which include but are not limited to remedial training, an improvement period, a reassignment, an oral warning, a letter of counseling, a written reprimand, and/or an adverse action (as defined in subpart F of this part); and

(2) Take appropriate action to address the deficiency, taking into account the circumstances, including the nature and gravity of the unacceptable performance and its consequences.

(c) As specified in subpart G of this part, employees may appeal adverse actions based on unacceptable performance.

§ 9701.409 Rating and rewarding performance.

(a)(1) Except as provided in paragraphs (a)(2) and (3) of this section, each DHS performance management system must establish a single summary rating level of unacceptable performance, a summary rating level of fully successful performance (or equivalent), and at least one summary rating level above fully successful performance.

(2) For employees in an Entry/Developmental band, the DHS performance management system(s) may establish two summary rating levels, *i.e.*, an unacceptable rating level and a rating level of fully successful (or equivalent).

(3) At his or her sole and exclusive discretion, the Secretary or designee may under extraordinary circumstances establish a performance management system with two summary rating levels, *i.e.*, an unacceptable level and a higher rating level, for employees not in an Entry/Developmental band.

(b) A supervisor or other rating official must prepare and issue a rating of record after the completion of the appraisal period. An additional rating of record may be issued to reflect a substantial change in the employee's performance when appropriate. A rating of record will be used as a basis for determining—

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(1) An increase in basic pay under § 9701.324;

(2) A locality or special rate supplement increase under § 9701.336;

(3) A performance pay increase determination under § 9701.342(a);

(4) A within-grade increase determination under 5 CFR 531.404, prior to conversion to the pay system established under subpart C of this part;

(5) A pay determination under any other applicable pay rules;

(6) Awards under any legal authority, including 5 U.S.C. chapter 45, 5 CFR part 451, and a Departmental or organizational awards program;

(7) Eligibility for promotion; or

(8) Such other action that DHS considers appropriate, as specified in the implementing directives.

(c) A rating of record must assess an employee's performance with respect to his or her performance expectations and/or relative contributions and is considered final when issued to the employee with all appropriate reviews and signatures.

(d) DHS may not impose a forced distribution or quota on any rating level or levels.

(e) A rating of record issued under this subpart is an official rating of record for the purpose of any provision of title 5, Code of Federal Regulations, for which an official rating of record is required.

(f) DHS may not lower the rating of record of an employee on an approved absence from work, including the absence of a disabled veteran to seek medical treatment, as provided in Executive Order 5396.

(g) A rating of record may be grieved by a non-bargaining unit employee (or a bargaining unit employee when no negotiated procedure exists) through an administrative grievance procedure established by DHS. A bargaining unit employee may grieve a rating of record through a negotiated grievance procedure, as provided in subpart E of this part. An arbitrator hearing a grievance is subject to the standards of review set forth in § 9701.521(g)(2). Except as otherwise provided by law, an arbitrator may not conduct an independent evaluation of the employee's performance or otherwise substitute his or her judgment for that of the supervisor.

(h) A supervisor or other rating official may prepare an additional performance appraisal for the purposes specified in the applicable performance management system (e.g., transfers and details) at any time after the completion of the minimum period. Such an appraisal is not a rating of record.

(i) DHS implementing directives will establish policies and procedures for crediting performance in a reduction in force, including policies for assigning additional retention credit based on performance. Such policies must comply with 5 U.S.C. chapter 35 and 5 CFR 351.504.

§ 9701.410 DHS responsibilities.

In carrying out its performance management system(s), DHS must—

(a) Transfer ratings between subordinate organizations and to other Federal departments or agencies;

(b) Evaluate its performance management system(s) for effectiveness and compliance with this subpart, DHS implementing directives and policies, and the provisions of 5 U.S.C. chapter 23 that set forth the merit system principles and prohibited personnel practices;

(c) Provide OPM with a copy of the implementing directives, policies, and procedures that implement this subpart; and

(d) Comply with 29 CFR 1614.102(a)(5), which requires agencies to review, evaluate, and control managerial and supervisory performance to ensure enforcement of the policy of equal opportunity.

Subpart E—Labor-Management Relations

EDITORIAL NOTE: At 73 FR 58435, Oct. 7, 2008, the application of subpart E to part 9701 was rescinded.

§ 9701.501 Purpose.

This subpart contains the regulations implementing the provisions of 5 U.S.C. 9701(b) relating to the Department's labor-management relations system. The Department was created in recognition of the paramount interest in safeguarding the American people, without compromising statutorily protected employee rights. For this reason